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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[Docket ID: DOD-2017-HA-0058]

RIN 0720-AB71

**TRICARE: Prescribing of Physical Therapy, Occupational Therapy, and Speech Therapy
by Other Allied Health Professionals Acting Within the Scope of their License**

AGENCY: Office of the Secretary, Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) proposes an amendment to the TRICARE regulation. Specifically, this proposed rule will allow coverage of otherwise authorized physical therapy (PT), occupational therapy (OT), and speech therapy (ST) for TRICARE beneficiaries when such services are prescribed by an authorized TRICARE Allied Health Professional acting within the scope of their license.

DATES: Written comments received at the address indicated below by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be accepted.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by either of the following methods:

- Federal eRulemaking Portal: www.regulations.gov. Follow the instructions for submitting comments.
- Mail: Department of Defense, Office of the Chief Management Officer, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350-1700.

Instructions: All submissions received must include the agency name and docket number or RIN for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Amber Butterfield, Defense Health Agency, TRICARE Health Plan, Medical Benefits and Reimbursement Division, (303) 676-3565.

SUPPLEMENTARY INFORMATION:

I. Executive Summary and Overview

A. Purpose of the Regulatory Action

This proposed rule will permit coverage of services prescribed by TRICARE-authorized individual allied health professionals for PT, OT, and ST. The current language of Title 32 Code of Federal Regulations (CFR), § 199.4(c)(3)(x) states that PT, OT, and ST may be cost-shared when services are prescribed and monitored by a physician, certified physician assistant, or certified nurse practitioner. In addition, 32 CFR 199.6(c)(3)(iii)(K)(2) currently states that the services of other individual paramedical providers, such as licensed registered PT, OT, and ST, can be considered for benefits on a fee-for-service basis only if the beneficiary is referred by a physician, certified physician assistant, or certified nurse practitioner and a physician, certified physician assistant, or certified nurse practitioner provides continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers. As a result, otherwise authorized PT, OT, and ST services for TRICARE beneficiaries are not covered benefits when other Allied Health Professionals, such as Doctors of Podiatry, even when acting within their scope of license, prescribe the services.

State governments generally regulate the licensure and practice of health care professionals, and DoD limits TRICARE benefits coverage to services and supplies furnished by otherwise authorized TRICARE individual professional providers performing within the scope of their state licenses or certifications. State scope of practice laws vary with regard to the range of services, and some include the authority to prescribe PT, OT, and ST. After assessing the information available, DoD has determined that it is unnecessarily restrictive not to cover otherwise authorized PT, OT, and ST services for TRICARE beneficiaries merely because the services are ordered by a non-physician. Therefore, the regulation is being amended to allow TRICARE coverage of PT, OT, and ST services when ordered by other Allied Health Professionals who are TRICARE authorized providers and acting within the scope of their state license or certificate.

B. Summary of the Major Provisions of the Proposed Rule

This rule allows TRICARE coverage of otherwise authorized PT, OT, and ST services when prescribed by TRICARE authorized allied health professionals when the allied health professional is acting within the scope of his/her license.

C. Expected Impact and Costs

The primary impact of this rule will result in less time and expense spent by beneficiaries and referring providers to obtain necessary medical services and supplies. Almost 10,000 beneficiaries visited a primary care provider after seeking care from a podiatrist, but prior to PT services, in 2017. With an average copay/cost-share of \$24 across networks and TRICARE programs, this rule will conservatively save beneficiaries up to \$230,000 per year in cost-sharing and will conservatively save TRICARE \$1.1 million per year as a result of reduced visits to referring providers.

Once beneficiaries initiate an episode of care with an Other Allied Health Professional for a covered disease or condition, they need not return to their Primary Care Manager for an office visit to obtain an examination and referral for PT, OT, or ST services. Assuming two hours by appointment (appointment, travel, waiting room, exam room), beneficiaries will save approximately 20,000 hours each year by not having to visit their referring provider prior to seeking PT, OT, or ST services. Referring providers will also save time, approximately 2,200 hours (15 minutes for a podiatrist to consult with a referring provider regarding a PT prescription) each year, as a result of reduced coordination and paperwork.

The proposed amendment to cover PT, OT, and ST services, when prescribed by a TRICARE-authorized Allied Health Professionals acting within the scope of their license, is not expected to increase the amount of otherwise covered PT, OT, and ST services. This is because prescriptions for such services are currently being written by those providers authorized to do so under the TRICARE program or those providers are countersigning prescriptions from Allied Health Professionals, such as a podiatrist. The DoD does anticipate, however, that there may be a marginal increase in administrative costs to accommodate changes to our contractors' systems, although the overall result of this change will create an efficiency in the process.

This proposed rule does not create new costs to the government, because it falls under the Transfer Payment clause in accordance with OMB Circular A-4. As this rule proposes, TRICARE payments for physical, occupational or speech therapy services provided to military beneficiaries and prescribed by Other Allied Health Professionals, represents an "Insurance Payment" as described in OMB Circular A-4.

II. Regulatory Procedures

Executive Order 12866, "Regulatory Planning and Review" and Executive Order 13563, "Improving Regulation and Regulatory Review"

Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a “significant regulatory action,” although not economically significant, under section 3(f) of Executive Order 12866. This proposed rule is not anticipated to have an annual effect on the economy of \$100M or more.

Accordingly, this rule has been reviewed by the Office of Management and Budget. *Executive Order (E.O.) 13771, “Reducing Regulation and Controlling Regulatory Costs”*

E.O. 13771 seeks to control costs associated with the government imposition of private expenditures required to comply with Federal regulations and to reduce regulations that impose such costs. Consistent with the analysis of transfer payments under OMB Circular A-4, this proposed rule does not involve regulatory costs subject to E.O. 13771.

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100M or more or have certain other impacts.

This proposed rule is not a major rule under the Congressional Review Act.

Public Law 96-354, “Regulatory Flexibility Act” (RFA), (5 U.S.C. 601)

The Regulatory Flexibility Act (RFA) requires that each Federal agency analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small

businesses, nonprofit organizations, and small governmental jurisdictions. This proposed rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, it is certified that this rule is not subject to the requirements of the RFA.

Public Law 104-4, Sec. 202, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995, requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in, any one year of \$100M, as of 1995 exchange rate , updated annually for inflation. That threshold level is currently approximately \$140M. This proposed rule will not mandate any requirements for state, local, or tribal governments or the private sector.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rulemaking does not contain a “collection of information” requirement, and will not impose additional information collection requirements on the public under Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. chapter 35).

Executive Order 13132, “Federalism ”

This proposed rule has been examined for its impact under Executive Order 13132, and it does not contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.4 is amended by revising paragraph (c)(3)(x)(A) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(c) * * *

(3) * * *

(x) * * *

(A) The services are prescribed and monitored by a physician or other TRICARE authorized allied health professional acting within the scope of their license.

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3. Section 199.6 is amended by revising paragraph (c)(3)(iii)(K)(2) to read as follows:

§ 199.6 TRICARE-authorized providers.

* * * * *

(c) * * *

(3) * * *

(iii) * * *

(K) * * *

(2) The services of the following individual professional providers of care, to be considered for benefits on a fee-for-service basis, may be provided only if the beneficiary is referred by a physician or other TRICARE authorized Allied Health Professional acting within the scope of their license and a physician or other TRICARE authorized Allied Health Professional acting

within the scope of their license must also provide continuing and ongoing oversight and supervision of the program or episode of treatment provided by these individual paramedical providers.

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Dated: April 2, 2019.

Aaron T. Siegel,
Alternate OSD Federal Register Liaison Officer,
Department of Defense.

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